Exhibit 1

IN THE UNITED STATES DISTRICT COURT

IN AND FOR THE DISTRICT OF DELAWARE

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S.O.I. TEC SILICON ON INSULATOR TECHNOLOGIES S.A. and SOITEC USA, INC.,	:	Civil Action
Plaintiffs and Counterclaim Defendants,	:	
v.	:	
MEMC ELECTRONIC MATERIALS, INC.,	:	
Defendant and Counterclaim Plaintiff.	:	No. 05-806(GMS)

- - -

Wilmington, Delaware
Thursday, February 28, 2008
10:30 a.m.
Telephone Conference

- - -

BEFORE: HONORABLE MARY PAT THYNGE, U.S.M.J.

APPEARANCES:

JOSEPH B. CICERO, ESQ.
Edwards Angell Palmer & Dodge LLP
-and-
BRIAN M. GAFF, ESQ.
Edwards Angell Palmer & Dodge LLP
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-and-
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(Chicago, IL)

Counsel for Plaintiffs
and Counterclaim Defendants

APPEARANCES CONTINUED:

PATRICIA SMINK ROGOWSKI, ESQ.
Connolly Bove Lodge & Hutz, LLP
-and-
ROBERT M. EVANS, JR., ESQ., and
MARC W. VANDER TUIG, ESQ.
Senniger Powers
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Counsel for Defendant
and Counterclaim Plaintiff

- - -

THE COURT: Good morning. This is Judge Thynge.

(Counsel respond "Good morning.")

THE COURT: Counsel, before we begin, who is on the line for Soitec?

MR. BRODY: This is Michael Brody, Your Honor.

THE COURT: All right.

MR. CICERO: Your Honor, Joseph Cicero from the office of Edwards Angell Palmer & Dodge here in Wilmington. Michael Brody is on from Winston & Strawn, and Brian Gaff is on from our Boston office.

THE COURT: All right. Thank you.

Who is on the line on behalf of the defendants, then?

MS. ROGOWSKI: Yes, Your Honor. This is Pat Rogowski of Connolly Bove for MEMC. Also with me will be Bob Evans and Marc Vander Tuig from Senniger Powers.

THE COURT: Thank you. All of you have

different first names, so that is how I am probably going to refer to you.

There is a couple of motions regarding some discovery disputes.

Counsel, before we begin, just a couple of reminders: One, state your name before you begin speaking so that the court reporter, who today is Kevin Maurer, by the way, knows who is speaking.

Also, counsel, this is now Judge Sleet's case, and he has not reassigned it to me. But I felt, in light of the fact that we had had discussions about discovery matters, rather than passing it back to Judge Sleet, I should just handle it and take care of it for him. I can't predict what is going to happen in the future in this case. I just don't know. So I am not giving you much direction, if there is any other discovery matters that arise.

All right. Let's take them in some type of order. Why don't we take the motion for protective order and to exclude a conflicted expert witness, which I believe is Soitec's issue.

MR. BRODY: That is correct, Your Honor. Would you like us to speak to it?

THE COURT: Sure.

MR. BRODY: I think it's pretty straightforward. We contacted Dr. Rozgonyi a number of months

ago. There was an initial conversation in which Mr. Gaff described some of our theories of the case. There was a followup conversation between Dr. Rozgonyi, myself, and Mr. Neuner in which we had some further discussions.

Dr. Rozgonyi quoted us a rate. And when we told him it sounded okay to us, he told us he was going to be working for MEMC.

There is no question that we sent him a copy of the patent. There is an e-mail from him giving a preliminary read on the patent and on the theories that we had discussed with him.

THE COURT: Why don't you point out to me, Mike, if you wouldn't mind, in your submission where that shows a copy of the patent, the preliminary read.

MR. BRODY: Sure. That is -- hold on.

THE COURT: I know it's under Exhibit A. It's what page under Exhibit A?

MR. GAFF: Your Honor, I believe that's Exhibit A, Page 1.

THE COURT: The actual first page.

MR. GAFF: Yes. There is a series of three e-mails on there. At the bottom of that page is the initial e-mail from me to Dr. Rozgonyi enclosing the patent. And then, just above that, there is an excerpt of another e-mail from me, directing him to particular column and lines in the

patent.

THE COURT: I just want to double-check, so I make sure we are both on the same page, if you excuse the expression. "Please see, e.g., Column 23, Lines 8 through 12"?

MR. GOFF: Right. That is a snippet of a second e-mail that I sent to Dr. Rozgonyi after the one just below that on that page, thanking him for his time. Then Dr. Rozgonyi's response is the top of that page.

THE COURT: Okay. I am trying to go through this. Are you saying the one, "I took a quick look at the patent and think I could help with demonstrating how weak MEMC's position is"?

UNIDENTIFIED SPEAKER: Yes.

THE COURT: Then he relates to you, he will be at the Hilton and he is off to Italy in two weeks.

UNIDENTIFIED SPEAKER: That's right.

THE COURT: I have read through these. I wanted to make sure what sections you were actually relying on. I have them highlighted.

MR. BRODY: Mr. Gaff, Brian has certainly pointed out the passage.

We are not pretending like we asked Dr. Rozgonyi to spend hundreds of hours on this matter. But there clearly was a series of discussions in which we shared with

him our thinking about the case and in which he gave us an initial response that was sufficient for us to conclude that -- and, frankly, for him to initially conclude that he could go forward and provide us with expert support in the matter.

The case that I think gets cited here is the Koch Refining case.

THE COURT: I have read through that. I have also read through the Hewlett-Packard Company matter.

MR. BRODY: Okay. I think the reality, the Koch case kind of sets out two, you know, polar extremes. One is the case where you have basically an extended compensated relationship, and the other is where there is one call. And I think we are clearly in between those.

Here we would say that at the one extreme is, as Koch characterizes it, there was a series of interactions. They did coalesce to the extent that Dr. Rozgonyi understood our position in the case and our theories of it, and did so well enough to be able to give us his preliminary view on the subject.

The other extreme, the Koch Court talks about a situation where you have only one meeting with counsel, which is not the case here. There were at least two substantive discussions.

It's true that Dr. Rozgonyi was not retained,

although he quoted us a rate and we proposed to retain him. He was supplied with some specific material in the case, namely, the patents in reference to the particular portions that we wanted him to think about, and, of course, our discussions with him about our thinking. And he was requested to perform a service. Essentially, we asked him to give us his preliminary thoughts on the substance of the matter.

There is a suggestion in Dr. Rozgonyi's declaration that there is nothing in our conversations that wasn't disclosed in the interrogatory answers. With due respect to his recollection, in fact, the heart of our discussion had to do with the defense under Section 112 of the Patent Act, which is not a defense that was requested in those interrogatories, and actually is not something that -- our thinking on that subject, at least, is not something that we have been asked to share with MEMC. As a result, we haven't.

So he knows about our theory of the case that up to now had been confidential. It's a problem for us if he picks up and switches sides.

While I realize that folks with these qualifications, you can't exactly find one on every street corner, there are a number of people who do this type of work. I don't understand the contention that, in fact, MEMC

would be without recourse if Dr. Rozgonyi were disqualified in this case. In fact, they have retained another expert in this matter, who has very strong credentials in this field, and presumably could address these issues if they need him to.

So we have a real concern here. I think we had a legitimate expectation that we were speaking to Dr. Rozgonyi on a confidential basis. And we would prefer not to see him popping up on the other side. And we think we have a right to request that.

(Pause.)

THE COURT: Counsel, we are back. Mr. Maurer expresses his apologies.

Michael, are you finished?

MR. BRODY: Mr. Gaff has, I think, a brief thought to add to this.

MR. GAFF: Your Honor, Brian Gaff here.

In my initial conversation with Dr. Rozgonyi, the first thing I inquired into was any conflicts of interest on his part, whether he was familiar with the parties who are involved, did he have a working relationship with any of them currently or any time in the recent past.

And he assured me that there were no conflicts. And based on that representation, I then launched into a discussion with him of the details of the case, the history

of the dispute, the parties, et cetera. And I can assure you that I would never have had that conversation regarding that subject matter with Dr. Rozgonyi had he indicated that there was a conflict of interest, if, for example, he said he had a relationship with MEMC.

It has always been my practice to tell an expert witness in these discussions that the discussions are confidential and that he should treat information confidentially going forward.

Again, I wouldn't have had the conversation with him had there been any representation on his part that there could have been a conflict of interest.

Thank you.

THE COURT: Thank you. Is there anything else that the plaintiffs' counsel wishes to add?

MR. BRODY: No, Your Honor.

THE COURT: Thank you. Can I please hear MEMC's argument.

MR. VANDER TUIG: Yes, Your Honor. Mark Vander Tuig for MEMC.

First of all, we would contend that even the details that have been added to the conversations with Dr. Rozgonyi by Soitec during the phone call today, they clearly fall on sort of the initial screening informal relationship side of the spectrum. The details that they have identified

are those which you have to disclose to any expert to determine whether or not that expert has the appropriate knowledge to be helpful in the case.

I don't think they have identified anything by identifying the copy of the patent and the Column 23 excerpt that has been identified. It's simply the definition section of the '104 patent. They have identified nothing that is anything more than they have disclosed in this lawsuit as far as their theories of the case, their position.

Mr. Brody identified the fact that we never asked about 112. But they have in Interrogatory No. 7, which is attached as Exhibit D to our filing, they did flag an ambiguous defense, which would be under 112, Paragraph 2, they state the phrase "substantially free of agglomerated intrinsic point defects," which happens to be the column number that they referenced here, the column and line number that they reference in their submission. That phrase, they claim, is ambiguous and cannot be construed.

So they have disclosed their position that they think that's indefinite under 112, it is my reading of that.

That was just a counter to Mr. Brody's point.

They have to identify under the law something specific and unambiguous that would prejudice them if it is revealed. I just don't think that they have done so here.

To address the point about the limited number of experts in this field, it's true that there is, as Mr. Brody points out, there is a limited number with the appropriate qualifications. And I note that Soitec at the time it contacted Dr. Rozgonyi had already retained several witnesses with expertise in this field.

THE COURT: I read Soitec's argument, as far as MEMC was concerned on this what you call, I guess, public information or public concern, that MEMC has been able to retain an expert in the same field.

MR. VANDER TUIG: They have one expert, that's true. They have retained one expert. Their specialties are a little different. The reason we approached Dr. Rozgonyi was to explore different areas of expertise that wouldn't have been covered by Bergholz, who is the other expert we have retained.

THE COURT: All right. Have you finished your arguments for MEMC?

MR. VANDER TUIG: Yes, Your Honor.

THE COURT: Is there any brief rebuttal that Soitec wishes to present?

MR. BRODY: Your Honor, very briefly, Mr. Vander Tuig is certainly correct that we indicated our view that that phrase was ambiguous. The concern is that we talked with Dr. Rozgonyi about our theories as to why that was the

case. And that's what we shared with him, and that's what we really would prefer not to share with Mr. Vander Tuig and Mr. Evans until we get to the appropriate point in the litigation.

THE COURT: Well, I had a chance to go over the two cases I predominantly looked at, because they seem to have been cited numerous times by both sides, the Hewlett-Packard case and the Koch Refining Company matter, I think both of them are instructive to this Court.

I note that one, the Hewlett-Packard case, is from the Northern District of California. The Koch Refining Company case is from the Fifth Circuit. But the issue the way that I was looking at it was the standards that were outlined in both of those opinions. And I also note that in the Hewlett-Packard case there was a bit of a conflict as to what information was conveyed to the expert. And I also note that in the Hewlett-Packard case, the relationship with the expert, from what I can tell, in that case certainly advanced further in my mind, based upon information that was discussed, than what necessarily occurred in this case.

For example, I think counsel in that case claimed the topics he had discussed included impressions of the patent, specific claim limitations, prior art, accused inventions, the type of evidence needed to prove infringement, and the names and qualifications of other

potential expert witnesses.

Of course, the expert characterized the conversation very differently. So the Court in Hewlett-Packard was faced with some conflicting differences between counsel who had had the discussion with the expert and the expert himself, not too unlike what we have here, that there is a difference between what counsel remembers and what the expert remembered.

In addition, that expert, I think, was compensated for his time that he had spent in his analysis on behalf of the party who had first contacted him.

There is a couple, I think, though, aspects that can't be ignored. One is that although we as Courts have the power to disqualify expert witnesses to protect the integrity of the adversarial process, disqualification is considered to be a drastic measure that the Courts impose hesitantly and rarely.

Also, there is a difference between communication between counsel and an expert and the attorney-client privilege, which was pointed out in the Hewlett-Packard case, noting that experts perform a very different function in litigation than do attorneys, and they are not advocates in the litigation but sources of information and opinions.

What this Court is supposed to look at to

determine if a disqualification of an expert is warranted, based upon the prior relationship with an adversary, includes whether the adversary had a confidential relationship with the expert and the adversary disclosed confidential information to the expert that is relevant to the current litigation.

To do the analysis of whether the disclosures were confidential is whether they were undertaken without an objectively reasonable expectation that they would be so maintained as being confidential or if, despite a relationship conducive to such disclosures, no significant disclosures were made, and therefore under those circumstances disqualification would be inappropriate.

It is the burden on the party seeking disqualification of an expert to demonstrate that it was reasonable for it to believe that a confidential relationship existed, and if so whether the relationship developed into a matter sufficiently substantial to make disqualification or some other judicial remedy appropriate.

And in evaluating the reasonableness of the parties' assumptions, there are a number of factors that were pointed out in the Hewlett-Packard case for this Court to look at, which I think have been discussed by the parties in this. And that Court also pointed out, as was oppositely pointed out in the Koch case, that you could have

disqualification denied, that is, it is not warranted, even if the expert has signed a confidentiality agreement with the adversary.

Koch and Hewlett-Packard both recognized that you don't have to have a confidential agreement already signed. Both cases emphasized what was the relationship and the expectation from, and really what is emphasized is whether there was confidential information disclosed.

As I said, there is a different standard, to some extent, as to what that confidentiality may very well be. Different isn't the right word. It's not the same as attorney-client privilege.

Confidential information is information of particular significance which can be readily identified as either attorney work product or within the scope of attorney-client privilege. And the strategy of the litigation is part of it that the Court takes into account. However, as decided in the Hewlett-Packard case, I find that the discussions between counsel and experts do not carry the presumption that confidential information has been exchanged. And the party is required to point to specific and unambiguous disclosures that if revealed would prejudice the party.

The Court is also required to consider the issues of fundamental fairness, that is, asking whether the

moving party was unduly disadvantaged and the opposing party would be also unduly disadvantaged, and whether any prejudice might occur if the expert is or is not disqualified.

Having considered all those factors, in applying it to this case, I am finding that Soitec hasn't met the standards that have been outlined in both the Koch and the Hewlett-Packard case.

Recognizing that there is some dispute between the expert as to what was disclosed, I don't think disclosing the patent and suggesting areas of the patent for the expert to read is sufficient enough, falls into the category of confidential information.

First of all, the patent is clearly not a confidential document. And pointing out an area or areas that they want the expert to concentrate on is insufficient, in my mind, to necessarily meet the aspect of was confidential information disclosed.

It to me is more like an initial screening process, certainly the type of questions that I believe Brian pointed out that he would have asked the expert, that is to determine if he is qualified, to determine if there is any conflicts of interest. And although, Brian, you may have expected that everything you were going to say to him was confidential, it still had to qualify that what you were

saying to him qualified as being confidential based upon the relationship or lack thereof that existed between the expert and counsel that was part of the conversation.

If, as you pointed out to me, Brian, you said you wouldn't have continued the discussions if there had been areas of potential conflict, that's fine. But potential conflict does not necessarily mean information disclosed rises to the level of being confidential. What I have heard so far today, I don't find that to have existed.

So I am not going to disqualify Dr. Rozgonyi in this case in light of the information that has been conveyed to me both in the arguments today and in the written submissions.

I also recognize that there is no doubt that this is a limited area of experts. I find that just because MEMC has retained an expert in this area, that suddenly means that MEMC is locked in and solely -- and that goes to somehow disprove that because it's been able to retain an expert there are available experts elsewhere. I note that parties frequently in patent litigation, and it doesn't seem this litigation is any different in that regard, frequently retain experts within the same field that may have a sub-field of expertise that might be particularly important to certain issues in the litigation.

I also find that some of the information that

was disclosed, apparently disclosed by Soitec to the expert, was also disclosed to the defense. I am not saying necessarily all, but certainly a piece of it. So that again removes the confidentiality aspect to me.

So, therefore, I am finding that, basically denying the motion to disqualify Dr. Rozgonyi.

All right. I think there is a series of different concerns, I believe, that have been expressed in the other motion that was filed in this case. Let me just pull that up, counsel.

Again, this is another motion by Soitec. First of all, it deals with the test data summaries and then your request for documents and deposition testimony relating to the conception of the alleged invention at issue.

So am I correct, this is the two other remaining issues that are both Soitec's?

MR. BRODY: That's correct, Your Honor.

THE COURT: Okay. Let's do the test data summaries. Michael, what I would like to really know from you is: What are you trying to get? I mean, you said that MEMC has agreed to produce the raw test data. Understand that you are talking to somebody that is completely ignorant about this technological area, so I am not exactly certain what the raw test data doesn't have that the written technology report summarizing and analyzing the test data

would have, that you would expect it to have.

MR. BRODY: Well, it's got the conclusions.

THE COURT: I understand it has the conclusions.

MR. BRODY: The data, it's not an accident that you have somebody write up reports on this sort of data. The data requires interpretation, and it requires analysis.

THE COURT: And you are basically saying that the sole basis given for MEMC's allegation of patent infringement was the testing that MEMC had performed on the donor wafer seized in the French case. Is that the same argument, is that being made in this case?

MR. BRODY: Yes. In fact, the interrogatory answer, we asked them why do you think we infringe. Their answer was, well, we tested the wafers we seized and we concluded that they infringed. So what I think we are entitled to is both the data on which that conclusion rests and the report drawing the conclusion and explaining the basis for the inference from the data.

So it's a situation where we have, you know, a contention of infringement that purports to be based on a report, and they are giving us half of, you know, the underlying data but not the report.

THE COURT: What do you do about their argument that you could easily conduct your own further testing of these wafers that are in your possession and find out why

they concluded in such a fashion?

MR. BRODY: I think there are two answers to that. The first is, I think we are entitled to know -- I don't understand --

THE COURT: You are entitled to know the basis for their contentions.

MR. BRODY: Yes, exactly. Our view is that -- in fact, we have already produced to them documentation that at least some of the wafers that were seized don't infringe. They apparently reached a different conclusion. So we would like to know what it is.

THE COURT: They seem to feel that there is an argument that this is attorney work product.

MR. BRODY: Yes. I am not clear --

THE COURT: Would you prefer to hear their argument as to the basis as to why it is attorney work product before you try to answer that in the abstract?

MR. BRODY: Sure. I think that would probably be more productive.

THE COURT: I do, too, because if somebody is alleging attorney work product, the burden is on them to show that it is. So that is my first question to MEMC.

MR. VANDER TUIG: Your Honor, the tests that were run and the summaries that are at issue today were both conducted and put together at the request of counsel for

litigation with Soitec. As such, we think that that is a showing that it is attorney work product.

THE COURT: Let me put it this way: Haven't you put into issue that Soitec infringes? And if these tests were run to show that Soitec has infringed, even though the attorney may have requested them being run, haven't you directly put into issue that particular point?

MR. VANDER TUIG: That would be going towards the waiver argument, I think?

THE COURT: Sort of, yes.

MR. VANDER TUIG: On that point we think that the scope of work product waiver is narrowly construed, and to the extent there was a waiver in our interrogatory responses by alluding to the test data, our agreement with Soitec's counsel to produce the raw test data, the numbers generated by the test methodology that were relied on would be the extent of that scope, that any kind of conclusions or opinions of MEMC's employees who conducted the testing concerning the test data would fall outside the scope of that narrow waiver, if there was one.

THE COURT: Well --

MR. BRODY: I just want to make clear, we are not contending that the production of the raw data was a waiver, because we did have an agreement with Mr. Evans to that effect.

THE COURT: And I wasn't reading that that is what you were saying. I got the read from you, and I wasn't talking about a waiver in the sense of production of, that somehow you waived by producing the raw data.

My question is, haven't you put Soitec's infringement directly into issue in this case? And in doing that, if it's in issue, I don't know how protected anything is, whether it is attorney work product or whatever. But the information that they are asking for, is this information that will be used in the case to prove infringement?

MR. VANDER TUIG: No, Your Honor. We asked Soitec to produce wafers in this case, in the Delaware litigation, and they have. And tests have been conducted and are being conducted on those wafers, and that will be the subject of our expert reports in this case on infringement, and we will not be relying on the prefiling testing that occurred.

THE COURT: But you used the prefiling testing to justify what you started off in this case. Is that correct? So that you could avoid Rule 11.

MR. VANDER TUIG: That's correct, Your Honor. We relied on the test data, the raw test data. We didn't rely on, necessarily, the various opinions and discussions that were in the report that was generated by MEMC's

employees at counsel's request.

MR. EVANS: Your Honor, we asked the employee to answer a number of questions for us and look at a number of different things. So he answered our questions in the course of his report. The concern we have is that when we produce anything -- and we will see it in the next question with respect to conception -- every time you do something, somebody says, well, you've waived up to that point, you've waived up to that point, you've waived up to that point.

Our point is to the extent there is infringement in the prefiling investigation, and we believe there is, we have given them all that raw data and answered the interrogatory as to our contention on that, the contention interrogatory.

To the extent we ask an employee in the context of an ongoing lawsuit, you know, specific questions and look at things from different directions, that would seem to be work product.

THE COURT: I see what you are saying.

MR. EVANS: So this is the employee's analysis that was written from our perspective of, you know, in the context of our discussions with him and what we wanted. All the raw data, they can look at it, they can reach their own conclusions.

Michael Brody, Mr. Brody said that there were

some wafers where they believe they don't infringe. And we have spoken with Mr. Brody, and we agree with him that on the wafers that showed what we call agglomerated defects, we have agreed with him that those wafers don't infringe.

So we don't have a dispute, I don't think, in terms of what wafers are in true contention here and which ones are not. And we are willing to give them all the raw data, and then they can make their own arguments if they think we have violated Rule 11, to make the argument as to why they think the data doesn't support what we did. We think it supports what we did.

THE COURT: When you gave them the raw data, did you give them the protocols on how they were tested?

MR. EVANS: If we haven't given them how the data was collected, we would certainly be happy to give them the protocols for how it was collected, certainly, yes.

THE COURT: Because the raw data is worthless unless you know how it was tested.

MR. EVANS: No. We are not going to hide behind -- if they need that information or don't have that information, we will certainly get that to them.

THE COURT: So is your argument to me, and explain this to me, that by giving conclusions of why the wafers that are still in dispute infringe, it would constitute basically crawling into your mind as to the type

of questions that were asked of these employees in doing their analysis?

MR. EVANS: Yeah. I think the employee's analysis written for the attorney in response to conversations with the employee is a work product document. He has prepared it for us to address the questions that we asked. And the raw data is what it is. And their expert can look at the raw data and reach whatever conclusions they want.

So it seems like the employee's impressions and responses to our questions are classic work product.

THE COURT: I understand what you are saying then.

Does that help you a little more, Mike, as to what their basis is for the work product argument? And do you have any response?

MR. BRODY: Yes, it does help me understand. I know you won't be shocked to learn that I still see an issue here.

THE COURT: Did you get the protocols, first of all, on how the testing was done?

MR. BRODY: First of all, we haven't actually gotten all the testing yet or the protocols.

We have had a very good-faith relationship, I think, with Mr. Evans and Mr. Vander Tuig. And if he says

he is going to give us everything up to the reports, it would be uncharacteristic of him not to do that. So I am confident he will give us full disclosure of what the testing was and how it was done. And if we have other questions, I am confident he will give us all that underlying information.

I think the real focus here is on, you know, essentially you have got the testing. You have got a report. Then you have got an interrogatory answer that was provided to us. The real focus is on that intermediate step.

THE COURT: Yes.

MR. BRODY: And whether that is work product and whether any privilege was waived.

I guess I would say that every expert report is always based on underlying data. If it were sufficient to simply disclose the underlying data, then we wouldn't have some of the provisions that we have in Rule 26, and we wouldn't have anywhere near the sort of disclosure that we typically do, precisely because the reason you ask an expert to prepare a report is to interpret data that is not transparent to lawyers or judges or juries and about which reasonable experts may disagree.

And in evaluating the data -- and more importantly, I mean, it's not just that we want to ask our

expert what do you think the data shows. We also want to ask our expert, do you think that MEMC was justified in reaching the conclusion that is stated as a contention in the interrogatories. And part of that analysis is understanding precisely the inference that's made from the data to the contention. And that is what is in the report.

You know, we have got the conclusion, we will get the data. But we are not being given the glue that holds the two together.

In order to understand whether the contention holds water, I think we are entitled to that.

Now, Mr. Evans, I have forgotten if it was Bob or Marc, indicated that there would probably be further testing, which there may well be. But that actually kind of heightens the importance of exactly the report, because we are entitled to test whatever we ultimately get against what they themselves initially viewed as an appropriate methodology for analyzing these wafers. You know, it may be that the two are perfectly consistent. But it may well be that they aren't.

We certainly ought to be in a position to understand that.

The fact that questions were asked the first time around that may or may not have been asked the second time around, you know, again, is really very much fair game.

Once you get past the step of talking about a consulting expert, once you get to the point where you are relying on an expert to support a contention made in a formal pleading, I think all that stuff is out the window.

THE COURT: Well, now, I wonder about that. That's the question I do have. If these individuals are not going to be called as experts, or used as factual witnesses for information to reach a conclusion -- the factual information they may have, but whether or not they are going -- what I was just told was that the types of questions that were asked of these employees -- and this is how I interpret it, and MEMC can tell me whether I am right or wrong on this -- those types of questions that were asked of those employees on these series of tests, and the findings or conclusions they made, will not be used in this case.

UNIDENTIFIED SPEAKER: That's correct, Your Honor.

MR. BRODY: But they have already been used. They formed the basis of a contention as to our infringement. We can't know what the basis of that contention is unless we know what the analysis was that was done to get from the raw data to the contention.

THE COURT: Are you saying, then, that in all circumstances, Mike, that if in support of responding to